

CCDLA
"Ready in the Defense of Liberty"
Founded 1988

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**RAISED SENATE BILL 280
AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES
MARCH 13, 2012**

**TESTIMONY OF EDWARD J. GAVIN and JENNIFER L. ZITO,
PAST PRESIDENTS OF THE CONNECTICUT CRIMINAL
DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF RAISED
SENATE BILL 280**

Hon. Eric Coleman, Senator
Hon. Gerald Fox, House Representative
Co-Chairmen, Judiciary Committee
Room 2500, Legislative Office Building
Hartford, CT 06106

Chairman Coleman, Chairman Fox, and Distinguished Members of the Judiciary Committee:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of approximately 350 licensed lawyers, in both public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not abridged.

CCDLA OPPOSES CAPITAL PUNISHMENT AND SUPPORTS RAISED SENATE BILL 280

CCDLA is firmly committed to the abolition of the death penalty in Connecticut and nationwide. We believe that capital punishment is never appropriate and that a penalty of life imprisonment without the possibility of release is more than adequate to protect Connecticut citizens and punish those who commit the most heinous homicides. We believe that capital punishment is morally wrong, that it is unconstitutional, per se and as applied, that it risks executing an innocent person, that it fails to deter crime, that it seldom provides closure to victims' families, and that it wastes scarce taxpayer dollars.

In 2005, we passed a resolution (Attached) denouncing capital punishment and joined a diverse coalition of organizations that called upon the Legislature and Governor M. Jodi Rell to repeal the death penalty and halt the execution of Michael Ross. In 2009, we were part of a broad group of organizations that persuaded the House and Senate to put an end to this barbaric and needless penalty and nearly persuaded Governor Rell to do the same. Today, we invite this Honorable Committee and ultimately the General Assembly and Governor Dannel P. Malloy to again examine capital punishment in Connecticut and to find, as we and many others have found, that it serves no useful or necessary purpose and that it must be eliminated.

RECENT DEVELOPMENTS (RETROACTIVITY):

The Connecticut Criminal Defense Lawyers (CCDLA) join the position of the Connecticut Network to Abolish the Death Penalty (CNADP) in that we support full repeal of the death penalty. We do support Raised Bill 280 as it is prospective in nature. We believe the passage of this bill is a step in the right direction towards complete abolition.

The existing case law is not clear on the issue of whether prospective abolition will inevitably lead to retroactive abolition. The New Mexico Supreme Court last year approved the capital prosecution of a pre-repeal death penalty inmate who challenged his death penalty prosecution after abolition was passed.

Moreover, in **People v. LaValle**, 3 N.Y.3d 88, 120, 817 N.E.2d 341, 783 N.Y.S.2d 485 (2004), the New York Court of Appeals held that a jury deadlock instruction prescribed by New York's death penalty statute violated that state's constitution. Due to the fact that New York State legislators have not cured the statutory defect, New York effectively has been without a death penalty since 2004.

Notably, the New Mexico ban is prospective only and no clemency has been granted to convicted capital offenders, leaving that state's existing death row intact. Given that circumstance, it is unlikely that the New Mexico legislature was convinced that the death penalty is intolerable under any and all circumstances. See **Atkins v. Virginia**, supra, 536 U.S. 342 (Scalia, J., dissenting) (legislation that abolished death penalty for persons with mental retardation prospectively only "is not a statement of absolute moral repugnance, but one of current preference between two [constitutionally] tolerable approaches").

It is our understanding that the Quinnipiac Law School clinic will be presenting testimony on the issue of retroactivity. CCDLA will defer to their exhaustive analysis.

Raised Senate Bill 280 is an opportunity to act. Nationally, death sentences are at a historic low, having fallen from a peak of 328 in 1994 to 112 in 2010. The steady decline appears to be the product of prosecutors' less frequent pursuit of the death penalty (often because of the high cost) and the growing uneasiness of juries to impose it (often because of the constant media drumbeat about executing the innocent). Regionally, Connecticut is the only state in the northeast corridor to have the death penalty on its books or to actually use it. And although its use is relatively infrequent (10 condemned men and one execution since 1973), Connecticut is still viewed as standing alone among the so-called "enlightened states." The death penalty, for its part, does not make Connecticut any safer than New York, New Jersey or Massachusetts. Thus, it no longer is a question of whether the punishment fits the crime, but rather whether, under evolving standards, the punishment fits the times.

Undoubtedly, Connecticut's economic woes have played a part in Raised Senate Bill 280 coming before this committee. But in the effort to save taxpayer dollars by scrapping the penalty, sight should not be lost of the penalty's real, modern day problems and eroding basis.

First, taking a life in order to prove how much we value another life does not strengthen society. The belief that some crimes are so atrocious that nothing less than the death penalty is warranted, is nothing more than vengeance. It may be wrapped in the mantle of retribution, but it is still vengeance. As the late Justice Thurgood Marshall stated, "vengeance and retaliation is an intolerable aspiration for a government in a free society."

Second, the death penalty cannot, and never will, adequately compensate family members for the loss they have suffered. More importantly, it rarely provides closure to the survivors who have sometimes been forced to wait (because of necessary procedural safeguards) twenty years for the execution. In effect, these people go from being a victim of the criminal to a victim of the criminal justice system. Our experience with the Ross execution is telling. When

interviewed by various media after the execution, many family members were heard to say that Ross' death did not bring the relief they anticipated or were promised. In fact, the stress and anxiety in the days leading up to the execution only added to the emotional strain.

Third, though Connecticut does not yet have a statistically significant sample or pool, there are early warning signs that the death penalty suffers from geographic disparity (Waterbury leads the prosecutions), racial disparity (most of the victims have been white) and economic disparity (most of the defendants have been poor). There also are early warning signs that the system has been infected with arbitrariness in that similar defendants have been treated dissimilarly. By design or not, such a system cannot stand.

Fourth, the death penalty risks the execution of an innocent person. The fact that jurors are concerned about this possibility does not lessen the risk, for such concern will not cure eyewitness misidentifications, false confessions, forensic errors and police and prosecutorial misconduct. James Tillman, Miguel Roman, Ron Taylor and George Gould are men who have been exonerated of murder.

Just this week Mr. Hubert Thompson was released from prison after serving 5 years of a 12 year sentence for a sexual assault that he did not commit. New testing of DNA material that was not previously available eliminated Hubert Thompson as the source of semen found on the victim. We all know that mistaken convictions do happen. Tillman, Roman, Taylor, Gould and Thompson are real – life examples of wrongful convictions.

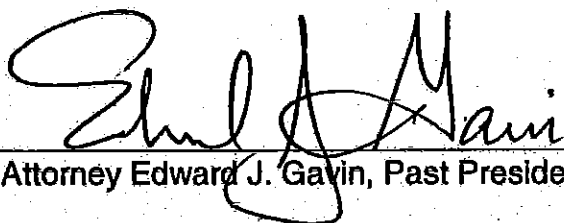
Fifth, there is no reliable statistical evidence that capital punishment deters potential offenders. (The evidence shows that death penalty states have about a 40 percent higher murder rate than non-death penalty states.) The death penalty certainly did not prevent the Cheshire homicides. Further, even if statistical evidence did exist, one must seriously question whether Connecticut's penalty has any utility at all given how infrequently it is pursued, imposed and carried out.

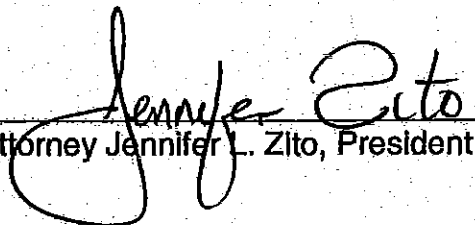
Thus, in the end, the death penalty has not made a single town or city in Connecticut more safe.

Finally, there is the cost factor. Though various state agencies and public interest groups are better suited to provide the precise numbers, it is generally agreed that elimination of the death penalty will save Connecticut five to ten million dollars per year. Some of the savings could be redirected to police departments, probation offices, mental health programs and violence prevention programs, particularly in at-risk communities. And it could be done without sacrificing community safety.

Thus, for these reasons we respectfully urge this Honorable Committee, the General Assembly and Governor Malloy to abolish capital punishment and enact Raised Senate Bill 280.

The Connecticut Criminal Defense Lawyers Association,

By 
Attorney Edward J. Gavin, Past President


Attorney Jennifer L. Zito, President

CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION

RESOLUTION

January 13, 2005

- WHEREAS,** the Connecticut Criminal Defense Lawyers Association is a statewide organization of three hundred lawyers dedicated to defending persons accused of criminal offenses;
- WHEREAS,** the Connecticut Criminal Defense Lawyers Association works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished;
- WHEREAS,** the Connecticut Criminal Defense Lawyers Association has steadfastly called for the abolition of the death penalty;
- WHEREAS,** the death penalty does not comport with human dignity and our evolving standards of decency;
- WHEREAS,** the death penalty is excessive and serves no valid legislative purpose;
- WHEREAS,** the death penalty has been applied in an arbitrary, capricious and racially discriminatory manner;
- WHEREAS,** the death penalty risks the execution of the innocent; and
- WHEREAS,** the death penalty is unconstitutional.

NOW THEREFORE BE IT RESOLVED that the Connecticut Criminal Defense Lawyers Association renews its call for the abolition of capital punishment in Connecticut.

Dated at Hartford, Connecticut, and adopted by the Connecticut Criminal Defense Lawyers Association on January 13, 2005.

MICHAEL A. FITZPATRICK
President

TARA L. KNIGHT
JON L. SCHOENHORN
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